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EXAMINER

FISCHER, ANDREW J

ART UNIT PAPER NUMBER

3627

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/032,780

Applicant(s)

KNUDTZON ET AL.

Examiner

Andrew J. Fischer

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*MW*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 8-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. §121:
  - I. Claims 1-7, drawn to a computerized accounting system, classified in class 705, subclass 30.
  - II. Claims 8-14, drawn to a method of automating an accounting system, classified in class 705, subclass 30.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. See MPEP §806.05(e). In this case, the apparatus as claimed can be used to practice another and materially different process—one that does not require allowing user to store transaction data representing financial transactions.
3. Because these inventions are distinct for the reasons given above, because these inventions have acquired a separate status in the art as shown by their different classification and divergent subject matter, and because the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Michael R. Schacht on or about June 17, 2004, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-7. Affirmation of this election must be made by Applicants in replying to this Office action.

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5. Claims 8-14 are withdrawn from further consideration by the Examiner, 37 C.F.R.

§1.142(b), as being drawn to a non-elected invention.

6. Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. §1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 C.F.R. §1.48(b) and by the fee required under 37 C.F.R. §1.17(i).

#### ***Acknowledgements***

7. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologizes for these errors.

#### ***Information Disclosure Statement***

8. The information disclosure statement ("IDS") filed June 3, 2003 (Paper No. 2) fails to comply with the provisions of 37 C.F.R. §§1.97, 1.98 and MPEP §609 because it does not provide the date and place of publication. Additionally, a date and place of publication could not be reasonably inferred from the content of the items listed within the IDS. In the past, the Examiner has considered such references only to have applicant subsequently argue that the date of the reference is not known and thus the reference can not be used in any rejection. The Examiner will not revisit that scenario. The two references have therefore been placed in the application file, but the information referred to therein has not been considered as to the merits.

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Applicants are advised that the date of any re-submission of any item of information contained in this IDS or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 C.F.R. §1.97(e). See MPEP §609 ¶C(1).

### *Drawings*

9. The drawings are objected to as failing to comply with 37 C.F.R. §1.84(p)(4) because reference characters “60” and “61” are reversed. Page 10, lines 5 and 6 of the original specification state “general ledger database 60” and “host system user interface 62” respectively. However Figure 1 shows the general ledger database as 62 while the host system user interface is depicted as 60. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 C.F.R. §1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC §102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-7 are rejected under 35 U.S.C. §102(b) as being anticipated by Speakman et. al. (U.S. 5,991,741) (“Speakman”). Speakman discloses the claimed invention including a host accounting system (in figure 1); an overlay system (IN\$SITE); a host and overlay reporting system (the reporting systems); a host general ledger (the “general ledger”); overlay general ledger database (the overlay is stored as a database); a transfer interface module (software which acts as a gateway and CPU 102); an overlay journal (the entry of records made by the overlay IN\$ITE); an overlay filter (inherent in the reporting of data from the databases); the system is access limiting (via the passwords and usernames).

***Claim Rejections - 35 USC §103***

12. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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13. Claims 1-7 are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Speakman.<sup>1</sup> It is the Examiner's principle position that the claims are anticipated because of the inerencies noted above.

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Speakman to include separate host and overlay reporting systems.

It is the Examiner's position that when the difference between the claimed invention and the prior art is that the prior art does not disclosed an element as separable or releasable, as a matter of law, it would have been obvious to one having ordinary skill in the art to make the element separable or releasable. See MPEP §2144.04 V. C. and *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961) (The claimed structure, a lipstickholder with a removable cap, was fully met by the prior art except that in the prior art the cap is "press fitted" and therefore not manually removable. The court held that "if it were considered desirable for any reason to obtain access to the end of [the prior art's] holder to which the cap is applied, it would be obvious to make the cap removable for that purpose."). As stated above, it is desirable to include separate host and overlay reporting systems in order to troubleshoot those devices.

14. After careful review of the specification and except for the term "report,"<sup>2</sup> the Examiner is unaware of any desire—either expressly or implicitly—by Applicants to be their own lexicographer and to define a claim term to have a meaning other than its ordinary and

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<sup>1</sup> See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of inherency is present in the anticipation rejection.

<sup>2</sup> Applicants in their original specification have redefined the term "report" to mean "any set of data contained in the general ledger database that has been filtered, sorted, and/or formatted for a particular accounting purpose." Applicants' original specification, page 2, ~ lines 11-13.

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accustomed meaning. Therefore, the Examiner starts with the heavy presumption that all claim limitations other than “report” are given their ordinary and accustomed meaning. See *Bell Atlantic Network Services Inc. v. Covad Communications Group Inc.*, 262 F.3d 1258, 1268, 59 USPQ2d 1865, 1870 (Fed. Cir. 2001) (“[T]here is a heavy presumption in favor of the ordinary meaning of claim language as understood by one of ordinary skill in the art.”); *CCS Fitness Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366, 62 USPQ2d 1658, 1662 (Fed. Cir. 2002) (There is a “heavy presumption that a claim term carries its ordinary and customary meaning.”). See also MPEP §2111.01 and *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).<sup>3</sup>

In accordance with the ordinary and accustomed meaning presumption, during examination the claims are interpreted with their “broadest reasonable interpretation . . . .” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See also MPEP §2111.

However, if Applicants disagree with the Examiner and have either (a) already used lexicography or (b) wish to use lexicography and therefore (under either (a) or (b)) desire an additional claim limitation to have a meaning other than its ordinary and accustomed meaning, the Examiner respectfully requests Applicants in their next response to expressly indicate<sup>4</sup> the

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<sup>3</sup> It is the Examiner’s position that “plain meaning” and “ordinary and accustomed meaning” are synonymous. See e.g. *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001) (“[A]ll terms in a patent claim are to be given their plain, ordinary and accustomed meaning . . .”).

<sup>4</sup> “Absent an *express intent* to impart a novel meaning, terms in a claim are to be given their ordinary and accustomed meaning. [Emphasis added.]” *Wenger Manufacturing Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225, 1232, 57 USPQ2d 1679, 1684 (Fed. Cir. 2001) (citations and quotations omitted). “In the absence of an *express intent* to impart a novel meaning to claim terms, an inventor’s claim terms take on their ordinary meaning. We indulge a heavy presumption that a claim term carries its ordinary and customary meaning. [Emphasis added.]”



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claim limitation at issue and to show where in the specification or prosecution history the limitation is defined. Such definitions must be clearly stated in the specification or file history. *Bell Atlantic*, 262 F.3d at 1268, 59 USPQ2d at 1870, (“[I]n redefining the meaning of particular claim terms away from the ordinary meaning, the intrinsic evidence must ‘clearly set forth’ or ‘clearly redefine’ a claim term so as to put one reasonably skilled in the art on notice that the patentee intended to so redefine the claim term”).<sup>5</sup> The Examiner cautions that no new matter is allowed.

Applicants are reminded that failure by Applicants in their next response to properly traverse this issue in accordance with 37 C.F.R. §1.111(b) or to be non-responsive to this issue entirely will be considered a desire by Applicants to forgo lexicography in this application (for terms other than the term “report”) and to continue having the claims interpreted with their broadest reasonable interpretation.<sup>6</sup> Additionally, it is the Examiner’s position that the above

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*Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1380 (Fed. Cir. 2002) (citations and quotations omitted).

<sup>5</sup> See also *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed. Cir. 1996), (“[A] patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, *as long as* the special definition of the term is *clearly stated* in the patent specification or file history. [Emphasis added.]”); *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998) (“Such special meaning, however, must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.”). See also MPEP §2111.01, subsection titled “Applicant May Be Own Lexicographer” and MPEP §2173.05(a) titled “New Terminology.”

<sup>6</sup> See 37 C.F.R. §1.104(c)(3) which states in part: “the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability . . . . [Emphasis added.]”

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requirements are reasonable.<sup>7</sup> Unless expressly noted otherwise by the Examiner, the preceding discussion on claim interpretation principles applies to all examined claims currently pending.

15. To the extent that the Examiner's interpretations are in dispute with Applicants' interpretations, the Examiner hereby adopts the following definitions—under the broadest reasonable interpretation standard—in all his claim interpretations.<sup>8</sup> Moreover, while the following list is provided in accordance with *In re Morris*, the definitions are a guide to claim terminology since claim terms must be interpreted in context of the surrounding claim language.<sup>9</sup> Finally, the following list is not intended to be exhaustive in any way:

**Computer:** “Any machine that does three things: accepts structured input, processes it according to prescribed rules, and produces the results as output.” Computer Dictionary, 3rd Edition, Microsoft Press, Redmond, WA, 1997.<sup>10</sup> **Client:** “3. On a local area network or

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<sup>7</sup> The Examiner's requirements on this matter are reasonable on at least two separate and independent grounds. First, the Examiner's requirements are simply an express request for clarification of how Applicants intend their claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicants is not inadvertently overlooked by the Examiner. Second, the requirements are reasonable in view of the USPTO's goals of compact prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO's The 21<sup>st</sup> Century Strategic Plan, February 3, 2003 available at [www.uspto.gov/web/offices/com/strat21/index.htm](http://www.uspto.gov/web/offices/com/strat21/index.htm) (last accessed June 23, 2004).

<sup>8</sup> While most definition(s) are cited because these terms are found in the claims, the Examiner may have provided additional definition(s) to help interpret words, phrases, or concepts found in the definitions themselves or in the prior art.

<sup>9</sup> See e.g. *Brookhill-Wilk 1 LLC v. Intuitive Surgical Inc.*, 334 F.3d 1294, 1300, 67 USPQ2d 1132, 1137 (Fed. Cir. 2003) (abstract dictionary definitions are not alone determinative; “resort must always be made to the surrounding text of the claims in question”).

<sup>10</sup> Based upon Applicants' disclosure, the art of record, and the knowledge of one of ordinary skill in this art as determined by the factors discussed in MPEP §2141.03 (where practical), the Examiner finds that the *Microsoft Press Computer Dictionary* is an appropriate technical dictionary known to be used by one of ordinary skill in this art. See e.g. *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit

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Internet, a computer that accesses shared network resources provided by another computer (called a server)." *Id. Server*: "2. On the Internet or other network, a computer or program that responds to commands from a client." *Id.*

**Database** "A file composed of records, each containing fields together with a set of operations for searching, sorting, recombining and other functions." *Id.*

"**ACCOUNTING**, system that provides quantitative information about finances of a person or business activity. Includes recording, measuring, and financial information."

Dictionary of Business Terms, 3<sup>rd</sup> Edition, Barron's Educational Series, Inc., 2000.

"**ACCOUNTING PRINCIPLES, ACCOUNTING STANDARDS** those that govern current accounting practices and are used as references to determine application of the appropriate treatment of complex transactions." *Id.* "**GENERAL LEDGER** formal ledger containing all the financial statement accounts of a business. It contains offsetting debt and credit accounts. Certain accounts in the general ledger, termed *control accounts*, summarize the details booked on separate subsidiary ledgers." *Id.*

16. With respect to claims 1-7, the Examiner respectfully reminds Applicants that: "A system is an apparatus." *Ex parte Fressola* 27 USPQ2d 1608, 1611 (B.P.A.I. 1993)(citations omitted).

Additionally, "[c]laims in apparatus form conventionally fall into the 35 U.S.C. §101 statutory category of a 'machine.'" *Ex parte Donner*, 53 USPQ2d 1699, 1701 (B.P.A.I.

1999)(unpublished), (Paper No. 34, page 5, issued as U.S. Patent 5,999,907). Therefore, it is the

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used the *Microsoft Press Computer Dictionary* (3d ed.) as "a technical dictionary" to define the term "flag." See also *In re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971)(noting that its appropriate to use technical dictionaries in order to ascertain the meaning of a term of art) and MPEP §2173.05(a) titled 'New Terminology.'

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Examiner's position that Applicants' "system" claims are "product," "apparatus," or more specifically, "machine" claims.<sup>11</sup>

17. In light of the fact that Applicants elected "product" or "machine" claims, Applicants are also reminded that functional recitations using the word "for," "adapted to," or similar functional terms (*e.g.* see claim 1 which recites "for allowing users to store transaction data representing financial transactions") in product claims are always considered but are given little patentable weight<sup>12</sup> because they fail to add any structural limitations and are thereby regarded as intended use language. A recitation of the intended use in a product claim must result in a structural difference between the claimed product and the prior art in order to patentably distinguish the claimed product from the prior art. If the prior art structure is capable of performing the intended use, then it reads on the claimed limitation. *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) ("The manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself."); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). See also MPEP §§ 2114 and 2115. Unless expressly noted otherwise by the Examiner, the claim interpretation principles in this paragraph apply to all examined claims currently pending.

By way of example only, the Examiner recommends removing "for" and/or other functional language where intended use is *not* desired.

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<sup>11</sup> Products may be either machines, manufactures, or compositions of matter. MPEP §2106 IV B. 2 (a).

<sup>12</sup> See *e.g.* *In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983)(stating that although all limitations must be considered, not all limitations are entitled to patentable weight.).

### *Conclusion*

18. The following references are considered pertinent to Applicants' disclosure: Bickerton et. al. (U.S. 6,684,384 B1); Kaplan et. al. (U.S. 6,584,453 B1); Boicourt et. al. (U.S. 2001/0029475 A1); Hotti et. al. (U.S. 6,144,941); Park (U.S. 6,058,375); Sampson (U.S. 5,390,113); and Lyons (U.S. 5,189,608).

The following two (2) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action: MPEP citations to Chapters 200, 700, 1800, and 2100 are from the MPEP 8<sup>th</sup> Edition, Rev 1, February 2003. All remaining MPEP citations are from MPEP 8<sup>th</sup> Edition, August 2001.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

20. In accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the references How Computers Work Millennium Ed. by Ron White; How Networks Work, Millennium Ed. by Frank J. Derfler et. al.; and Borland's ReportSmith for PC and SQL Databases User's Guide are additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. Each reference is cited in its entirety. Moreover, because these three references are directed towards beginners (see e.g. "User

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Level Beginning . . .”), because of the references’ basic content (which is self-evident upon review of the references), and after further review of the entire application and all the art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that these three references are primarily directed towards those of low skill in this art. Because these three references are directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within these three references.

21. In accordance with the USPTO’s goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. If Applicants disagree with any factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,<sup>13</sup> the Examiner respectfully reminds Applicants to properly traverse the Examiner’s position(s) in accordance with 37 C.F.R. §1.111(b) in their next response. By addressing these issues now, matters where the Examiner and Applicants agree can be eliminated allowing the Examiner and Applicants to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicants have any questions regarding the Examiner’s positions or have other questions regarding this communication or even previous communications, Applicants are strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292. If attempts to reach the Examiner by telephone are

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unsuccessful, the Examiner's immediate supervisor, Robert Olszewski, can be reached at (703)

308-5183. To respond to this Office Action by facsimile, fax to (703) 872-9306.

*AJFischer 6/23/04*

Andrew J. Fischer  
Patent Examiner  
Art Unit 3627

AJF  
June 23, 2004

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<sup>13</sup> *E.g.*, if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.